

**CITY OF WEST DES MOINES
BOARD OF ADJUSTMENT COMMUNICATION**

Meeting Date: April 7, 2021

Item: Gale Residence – 4961 Ashley Park Drive – Zoning exception from the rear yard setbacks to accommodate a building addition – VAR-005064-2021

Requested Action: Zoning Exception to Reduce Rear Yard Setbacks

Lead Staff Member: Bryce C. Johnson

Applicant's Request: The property owners, Kerry and Karin Gale, would like to construct an addition to the northwest corner of their existing home. The shape of the lot is such that it has two rear yard lot lines. Adjacent to one lot line is a 50-foot wide easement area which contains an underground electric line, a water main and overhead power lines. The typical 35' rear yard setback is indicated as measured from the easement line, thus effectively requiring an 85-foot rear yard setback. A 10-foot PUE and 60-foot buffer are located adjacent to the other rear lot line (adjacent to S 50th St). The 35-foot rear yard setback is measured from the interior side of the buffer resulting in a 95-foot rear yard setback. Typically, setbacks are measured from a property's perimeter lot lines; however, the setbacks for the subject property are measured from these easements, which significantly reduces the buildable area of the lot. Therefore, the applicant is seeking approval of the zoning exception that allows a reduction by no more than 25% of the City Code required rear setback for principal structures. If approved, the 25% exception would allow up to an 8.75-foot encroachment into these rear yard building setbacks. The applicant anticipates needing no more than a 6-foot encroachment into both building setbacks to accommodate their desired building addition.

History: The subject property is Lot 58 of the Meadow Vista subdivision that was approved in 1992. Later in 1997, the subject property was incorporated into the Southwood Knolls PUD which established land use regulations according to the R-1, Single Family Residential, zoning district.

City Council Subcommittee: This item was not presented to the Development and Planning City Council Subcommittee as they do not have authority over zoning exceptions.

Staff Review and Comment: Staff would summarize the following key points of interest:

- **Current Easements:** As noted earlier, the subdivision in which the subject property is located was platted with a 60-foot buffer easement off S. 50th Street and a 50-foot overhead power line easement. The subject site is the only property in this neighborhood that has both easements located on their property. These large easements and the 35-foot rear yard setback measured from the easements has significantly reduced the buildable area of the subject property compared to neighboring properties.
- **Existing Shed On-Site:** There is currently an existing shed on the property that does not comply with existing accessory structure setbacks. The applicant has noted plans to relocate this shed if this zoning exception request is approved. Staff recommends a condition of approval be placed on this request requiring the shed to be removed, or if relocated to comply with the accessory structure setback requirements stated in Title 9 of the municipal code.

Zoning Exception Findings: The applicant's findings to grant a Zoning Exception, and staff's findings, are attached as Attachment C and D, respectively.

Noticing Information: On March 26, 2021, notice of the April 7, 2021, Board of Adjustment Public Hearing on this project was published in the Des Moines Register. Notice of this public hearing was also mailed to all surrounding property owners within 370 feet of the subject property on March 22, 2021.

Property Owner: Kerry and Karin Gale
4961 Ashley Park Drive
West Des Moines, IA 50265
karinfgale@gmail.com

Applicant's Representative:
Same as above

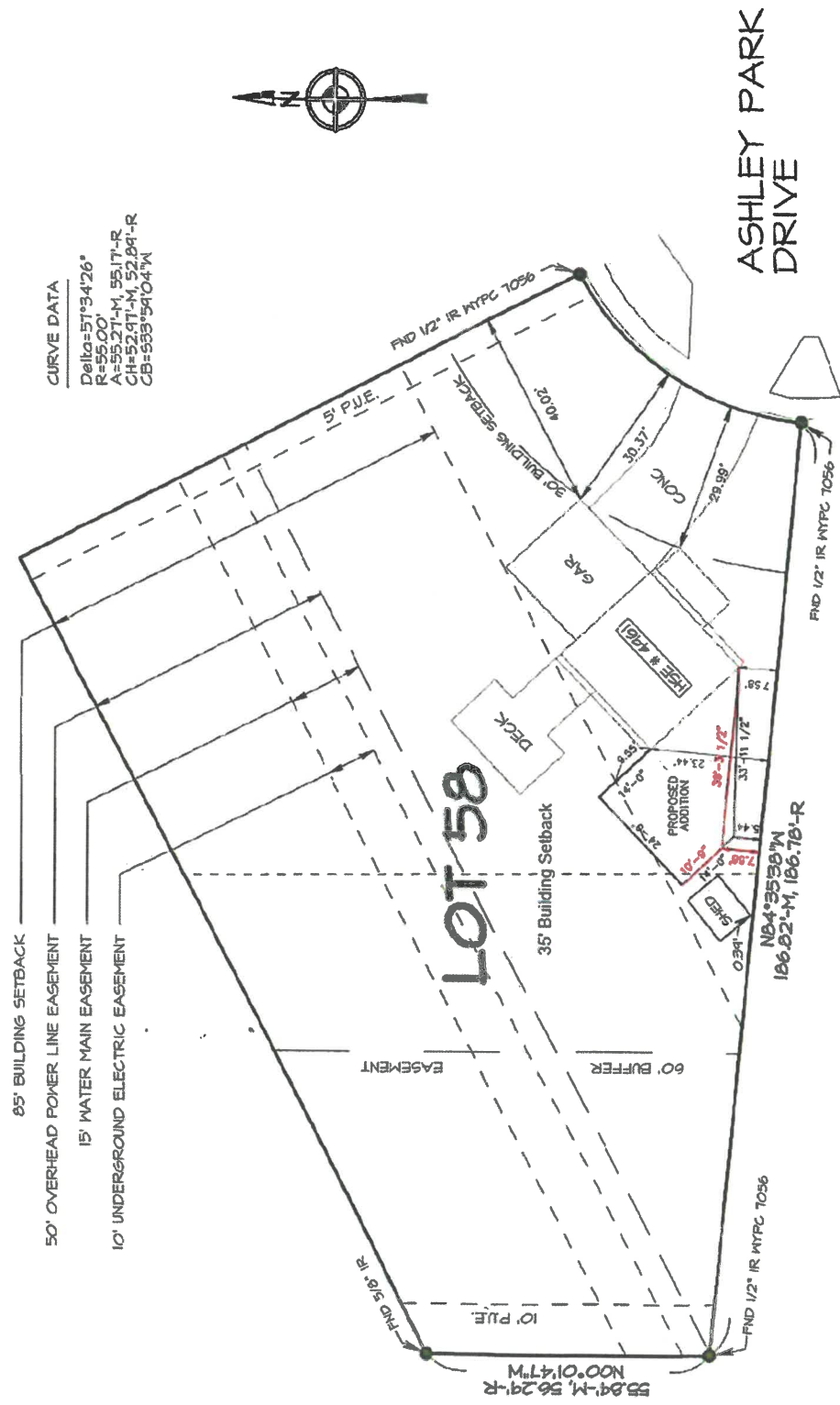
ATTACHMENTS:

- Attachment A - Location Map
- Attachment B - Site Sketch
- Attachment C - Applicant's Findings
- Attachment D - Staff's Findings
- Attachment E - Board of Adjustment Resolution
- Exhibit A - Conditions of Approval
- Exhibit B - Board Findings



**Aerial Map of Subject Property:
4961 Ashley Park Drive**

The City of West Des Moines makes no claim as to the accuracy, completeness or correctness of the City of West Des Moines digital maps and associated data and assumes no responsibility for their positional or content accuracy.



DATE: MARCH 23, 2021
 SCALE: 1"=30'

ROSS LAND SURVEYING, inc PO Box 336 Johnston, Iowa 50131 PHONE: 515.254.2567
 JOB #7024

Attachment C - Applicant's Findings

A zoning exception may be approved only when the Board of Adjustment determines that all the following standards and criteria have been met. There may be zoning exception requests that are not granted. **It shall be the responsibility of the applicant to prove to the satisfaction of the Board that the following findings can be made:**

- 1. Without the requested exception, strict compliance with the ordinance prevents improvement of the property in a manner which is reasonable, customary, and consistent with other properties in the area:**

APPLICANT RESPONSE: Strict compliance with the ordinance without the requested exemption would totally prevent us from adding to the house to solve the problem of stairs. We really do need to have 2 rooms on the ground floor to solve the problem, and we cannot do that on either the north or east side of the house. The deck is on the north side, and on the east is the garage which has no access to the rest of the house, as well as possibly encroaching on a required distance between properties. Other properties in the neighborhood customarily have both kitchen and rooms on the ground floor, so this is not really an unreasonable or unusual occurrence. It would make our ground floor and basement larger, but there are other homes in the area as big or bigger.

- 2. Without the requested exception, strict compliance with the ordinance results in a practical difficulty. A "practical difficulty" may be shown by:**

- a. Significant or unjustified expense in light of the scope of the project; or
- b. Destruction or demolition of significant or attractive features of the property, or similar reasons; or
- c. Unique physical attributes of the subject property such as exceptional narrowness, shallowness, size, shape, mature & desirable vegetation, natural water features such as streams, creeks, and ponds, or topographical conditions of the subject property that restrict the placement of the intended improvement; or
- d. Orientation or interior configuration of the existing structure which impacts the logical function of the intended improvement unless additional modifications are made to the existing layout or use of the existing structure.

APPLICANT RESPONSE: The only other option besides those already mentioned that we could think of was to install an elevator from the top floor going to the ground floor and basement. This would be a huge expense, and we're not even sure it would be possible. It would also take away much needed home space and would essentially be beyond the scope of this project. Destruction or demolition of property would not be a resulting event; we simply would not be able to complete our project. The one physical attribute of the property dictating our Exception Request is an odd-shaped lot with several different rights-of-way, as can be seen on the attached diagram. We feel there is simply nowhere else to reasonably go except the northwest corner as illustrated in the diagram. Reconfiguring the current home in a major way would be an almost insurmountable difficulty, so we have not considered any major changes to what is now in place. It would not create more square footage anyway.

- 3. The requested exception is the minimum necessary to achieve the purpose of the request.**

APPLICANT RESPONSE: *As explained above, we need this extra space to achieve our remodeling goals.*

- 4. The requested exception will not have a substantial negative impact on the character and context of the neighborhood.**

APPLICANT RESPONSE: *The only noticeable difference after the new construction will be a slightly longer home extending to the northwest. It will be on land that is currently not really used much by us (or our neighbors) and will not be obscuring any important view from our or the next-door neighbor's property, particularly as it is only one story high.*

- 5. The requested exception will not be detrimental to the public health, safety, or general welfare.**

APPLICANT RESPONSE: *The requested exception will not be detrimental to the public health, safety, or general welfare.*

- 6. The requested exception does not authorize or expand a use or activity not otherwise expressly authorized by the regulations within the zoning district in which the property is located.**

APPLICANT RESPONSE: *The requested exemption does not authorize or expand any activities now occurring or not authorized by current regulations in any way.*

Attachment D - Staff's Findings

A zoning exception may be approved only when the Board of Adjustment determines that all of the following standards and criteria have been met. There may be zoning exception requests that are not granted. **It shall be the responsibility of the applicant to prove to the satisfaction of the Board that the following findings can be made:**

- 1. Without the requested exception, strict compliance with the ordinance prevents improvement of the property in a manner which is reasonable, customary, and consistent with other properties in the area:**

STAFF RESPONSE: *The subject property is an odd shaped lot which contains two large easements. With the required setbacks from these easements and an offset cul-de-sac in the result is an oddly shaped buildable area that is smaller in size in comparison to the other lots within the plat. It is also important to note that the proposed addition will not protrude into the side yard setback along the south property line.*

- 2. Without the requested exception, strict compliance with the ordinance results in a practical difficulty. A "practical difficulty" may be shown by:**

- a. Significant or unjustified expense in light of the scope of the project; or
- b. Destruction or demolition of significant or attractive features of the property, or similar reasons; or
- c. Unique physical attributes of the subject property such as exceptional narrowness, shallowness, size, shape, mature & desirable vegetation, natural water features such as streams, creeks, and ponds, or topographical conditions of the subject property that restrict the placement of the intended improvement; or
- d. Orientation or interior configuration of the existing structure which impacts the logical function of the intended improvement unless additional modifications are made to the existing layout or use of the existing structure.

STAFF RESPONSE: *As noted above, the large depth easements and measuring of the required setbacks from these easements, along with the cul-de-sac offset to the north, has resulted in an oddly shaped buildable area that is reduced in size in comparison to the other lots within the plat. Additionally, reconfiguring the addition to the east or installing an elevator would result in a significant or unjustified expense in light of the scope of the project.*

- 3. The requested exception is the minimum necessary to achieve the purpose of the request.**

STAFF RESPONSE: *The applicant's addition as drawn illustrates the minimum encroachment needed to allow for the addition based on the orientation of the existing building. Staff believes this request is the minimum necessary to achieve this addition but is requesting the maximum setback encroachment to accommodate construction adjustments during the expansion.*

- 4. The requested exception will not have a substantial negative impact on the character and context of the neighborhood.**

STAFF RESPONSE: *Staff believes the proposed addition will not have a substantial negative impact on the neighborhood. The drawings show the proposed addition*

extending away from the adjacent home to the south and the size of the home after the addition will be comparable to other homes within the development.

- 5. The requested exception will not be detrimental to the public health, safety, or general welfare.**

STAFF RESPONSE: *The requested exception will not be detrimental to the public health, safety, or general welfare.*

- 6. The requested exception does not authorize or expand a use or activity not otherwise expressly authorized by the regulations within the zoning district in which the property is located.**

STAFF RESPONSE: *The requested exception does not authorize or expand a use or activity not otherwise expressly authorized by the regulations within the Single Family Residential (R-1) zoning district as the site is developed with a single family dwelling, which is an allowed use in the designated zoning district.*

Prepared by: B. Johnson, West Des Moines Development Services PO Box 65320 West Des Moines IA 502650320 515-222---3620
When Recorded, Return to: City Clerk, City of West Des Moines PO Box 65320 West Des Moines IA 50265-0320

RESOLUTION BOA-2021-05

**A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE CITY OF WEST DES MOINES,
(APPROVING / DENYING) THE ZONING EXCEPTION REQUEST (VAR-005064-2021)
ALLOWING A REDUCTION BY NO MORE THAN TWENTY-FIVE PERCENT (25%) OF CITY
CODE REQUIRED REAR YARD SETBACK FOR PRINCIPAL STRUCTURES FOR THAT
PROPERTY LOCATED AT 4961 ASHLEY PARK DRIVE**

WHEREAS, pursuant to the provisions of Title 9, Chapter 1 et seq, of the West Des Moines Municipal Code, the applicant and property owner, Kerry and Karin Gale, have requested approval of a Zoning Exception from Title 9, Zoning, Chapter 7 (*Setback and Bulk Density Regulations*), Section 4 (*Setback and Bulk Density Regulations*), Table 7.2, of eight and three quarter feet (8.75') of the required thirty-five-foot (35') rear yard setback for both rear yards resulting in a twenty six and one quarter foot (26.25') rear yard setbacks for an addition that will be located on the property located at 4961 Ashley Park Drive and legally described as:

**LOT 58 MEADOW VISTA, AN OFFICIAL PLAT WITHIN THE CITY OF WEST
DES MOINES, POLK COUNTY, IOWA**

WHEREAS, studies and investigations were made, and staff reports, and recommendations were submitted which is made a part of this record and herein incorporated by reference; and

WHEREAS, on April 7, 2021, the Board of Adjustment held a duly noticed public hearing to consider the application for a Zoning Exception (VAR-005064-2021).

WHEREAS, based upon a review of the submitted zoning exception request, the Board of Adjustment finds (**In Favor of Applicant's Findings, In Favor of Staff Findings, or in Favor of the Board's Findings**) _____ as attached at Exhibit B;

NOW, THEREFORE, THE BOARD OF ADJUSTMENT OF THE CITY OF WEST DES MOINES DOES RESOLVE AS FOLLOWS:

SECTION 1. A Zoning Exception Request (VAR-005064-2021), to allow a zoning exception of eight and three quarters foot (8.75') of the required thirty-five-foot (35') rear yard setback to construct an addition on property located at 4961 Ashley Park Drive is (**approved / denied**).

PASSED AND ADOPTED on April 7, 2021

Angie Pfannkuch, Chair

ATTEST:

Recording Secretary

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Board of Adjustment for the City of West Des Moines, Iowa, at a regular meeting held on April 7, 2021, by the following vote:

AYES:

NAYS:

ABSTAIN:

ABSENT:

ATTEST:

Recording Secretary

Exhibit A
Conditions of Approval

1. The existing shed on-site be removed, or relocated, in compliance with accessory structure setbacks stated in Title 9, Zoning Code, of the City of West Des Moines.

Exhibit B
Board of Adjustment Findings

1.